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9 UNITED STATES BANKRUPTCY COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 In Re  
12 DAVID BRYAN,  
13 Debtor

Case No.: 10-33670-TEC  
Chapter 7

14 REQUEST FOR JUDICIAL NOTICE  
15 OF OHIO INVESTIGATION  
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1 Debtor, by and through his counsel, hereby requests that  
2 this Court take judicial notice of attached Exhibit A **News Articles**  
3 **Regarding Ohio Situation.** This request is made in conjunction with  
4 Debtor's Opposition to Movant's Motion For Relief from Automatic  
5 Stay. This request is made pursuant to Federal Rule of Evidence 201  
6 and the court's power to take judicial notice of facts generally  
7 known as a result of newspaper articles regarding investigations of  
8 Movant's activities in other jurisdictions. Washington Post v.  
9 Robinson, 935 F. 2d 282, 291 (Dist. of Columbia Cir. 1991).

10  
11 Dated: \_\_\_\_ 23 NOV 2010 \_\_\_\_\_

12 \_\_\_\_\_/s\_\_\_\_\_  
13 Timothy Y. Fong  
14 Attorney for Debtor David Bryan  
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# Big Banks Told Not To 'Fix' A Fraud

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By **ROBBIE WHELAN**

Ohio's attorney general threw a wrench into the banking industry's push to quickly restart foreclosures by fixing faulty paperwork, and pressed them to modify mortgage loans.

In two letters released Friday, Attorney General Richard Cordray criticized a number of banks and loan-servicing companies, including [Wells Fargo & Co.](#); Ally Financial Inc.'s GMAC Mortgage; [Bank of America Corp.](#); and [J.P. Morgan Chase & Co.](#) Mr. Cordray said the banks are trying to paper over fraud committed in foreclosures with temporary fixes that don't address underlying problems in the banks' practices.

"It is not acceptable for a party who believes they submitted false court documents to merely replace those documents. Wells Fargo and any other banks are not simply allowed a 'do-over,'" he wrote in the letter to Wells. The other letter was sent to Ohio judges, who were asked to notify Mr. Cordray when banks file substitute affidavits.

He demanded that the banks vacate any court order or motion that was based on improper paperwork. In an interview Friday, Mr. Cordray said the banks would "be well-served to work out a settlement with the borrowers to modify the loans and work out payments."

Mr. Cordray's letters come as several banks say they have reviewed their foreclosure procedures and are resuming evictions. But his insistence that they go beyond replacing affidavits by employees who have been labeled "robo-signers"—who didn't adequately review underlying foreclosure documentation—threatens to upend banks' efforts to resolve their foreclosure problems.

Mr. Cordray's strategy gives clues to the goals of a 50-state probe, which was announced two weeks ago. Led by Iowa Attorney General Tom Miller, the effort was joined by top law-enforcement officers from all 50 states in response to reports of widespread errors in foreclosure filings and allegations of robo-signing.

"The banks are committing fraud on the court, essentially perjury, and then saying 'Whoops! You caught me! Here's some different evidence and use that instead,'" Mr. Cordray said in an interview Friday. "I know a lot of judges are not going to take kindly to that."

Bank of America declined to comment. A Wells Fargo spokeswoman said Friday the company intends to cooperate with Mr. Cordray's inquiries and doesn't "believe that any of these instances led to foreclosures which should not have otherwise occurred." She added that Wells Fargo has "chosen to submit supplemental affidavits out of an abundance of caution."

Tom Kelly, a J.P. Morgan spokesman, said the company is still reviewing foreclosure documents for mistakes and hasn't refiled any new or replacement affidavits. Gina Proia, a spokeswoman for GMAC, said her company is "not proceeding with foreclosure sales in Ohio or any state using a defective affidavit."

The aims of the 50-state probe were initially unclear. Some attorneys general, however, made reference to a 2008 settlement in which Bank of America agreed to an \$8.4 billion loan-

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modification program after its Countrywide Financial unit was probed for predatory lending practices.

Mr. Cordray declined to discuss the 50-state investigation or the conversations he has had with other attorneys general about the matter. Mr. Cordray, a Democrat, faces a Republican challenger for his office in Tuesday's general election.

Wells Fargo Chief Financial Officer [Howard Atkins](#) said in an Oct. 20 television interview that he was "confident with our policies and controls" related to foreclosures and that "the person at Wells who signs a foreclosure file is the same person as the person who reviews the file, and it is not always done that way in the industry."

But on Oct. 28, Wells announced it was resubmitting affidavits for 55,000 pending foreclosures, suggesting that some of the paperwork might be flawed. In March, a Wells Fargo employee named Xee Moua said in a sworn deposition in a Florida foreclosure case that she signed between 300 and 500 foreclosure documents a day, without reviewing the numbers on the loan files for accuracy.

Asked if she verified the appropriate information, she said, "That's not part of my job description."

—Ruth Simon, Dan Fitzpatrick and Vanessa O'Connell contributed to this article.

Printed in The Wall Street Journal, page B1

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## Ohio GMAC Foreclosure Case May Set Anti-Wall Street Precedent

By Michael Riley - Nov 8, 2010 12:06 PM PT

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The office complex of GMAC Mortgage.  
Photographer: Bradley C. Bower/Bloomberg

When James Renfro had to stop making payments on his two-story fixer-upper in Parma, Ohio, a suburb of Cleveland, he triggered events that were supposed to result in the forced sale of his home.

That Nov. 15 auction has been canceled because of defects in documents submitted by his loan servicer, [Ally Financial Inc.](#)'s GMAC Mortgage unit. Two affidavits about Renfro's home

were signed by Jeffrey Stephan, a GMAC employee who said in sworn depositions in Florida and Maine that he hadn't read thousands of affidavits he'd signed.

Renfro's case has created a showdown between GMAC and Ohio's Attorney General [Richard Cordray](#). Cordray has asked Cuyahoga County Court of Common Pleas Judge Nancy Russo not to let GMAC simply submit new documents to cure defects without consequences. He's taken the same stand against [Wells Fargo & Co.](#), which has said it found defects in 55,000 foreclosures.

"This is just the first," said Cordray, who filed an amicus, or friend-of-the-court, brief in the Renfro case. He argued that Russo should punish GMAC, the fourth-largest U.S. mortgage lender, for its conduct.

The judge today in Cleveland set an accelerated schedule for evidence-gathering in the case, leading up to a Feb. 17 hearing on the integrity of the loan documents. Cordray's office plans to file a motion tomorrow asking to take part in the case and participate in so-called discovery.

### Allegations of Fraud

The precedent set by the case might hasten a settlement between home lenders and the attorneys general of the 50 U.S. states, who are investigating allegations of fraud in foreclosure filings. Those being probed include San-Francisco- based Wells Fargo, which has said it will re-file foreclosure affidavits involving statements that "did not strictly adhere to the required procedures."

In potentially thousands of cases across the U.S., judges have the power to impose "sanctions, penalties, fines and even default," as the banks try to submit substitute paperwork to proceed with flawed foreclosures, Cordray said.

"The banks want to wish this away and pretend like it doesn't exist," he said.

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In September, Detroit-based Ally briefly suspended foreclosures in 23 states where there is judicial review and later announced an independent survey of foreclosure proceedings that would extend nationwide. After a review, the company began reinstating proceedings in cases it said didn't involve errors.

#### 'Facts of Default'

"The underlying facts of default in this case are not in dispute," [Jim Olecki](#), a spokesman for Ally, said of the foreclosure of Renfro's home. "We only pursued foreclosure after all other home preservation options had been exhausted."

Ally disputes assertions Cordray made in his amicus brief in the Renfro case.

"To date, we have found no evidence of any inappropriate foreclosures," Olecki said.

Tom Goyda, a spokesman for Wells Fargo, said the lender would go ahead with plans to re-submit thousands of affidavits in cases nationwide, including Ohio. When judges seek information on documents already filed, "we will work with them to meet their concerns," Goyda said.

The 50-state investigation is focused on uncovering the scope of tainted foreclosures, including how many so-called robo-signers processed documents they didn't review, Cordray said. So far, investigators have identified "double figures of robo-signers" working on behalf of lenders such as [JPMorgan Chase & Co.](#) and [Bank of America Corp.](#), he said.

#### Suspended Foreclosures

Such banks are conducting their own reviews to spot errors and determine how many cases with defects are involved. GMAC's Stephan testified to signing as many as 10,000 documents a month. New York-based JPMorgan initially suspended foreclosures in 23 states affecting 56,000 cases to review potentially faulty documents.

Among the least appealing scenarios for the lenders is that affected cases will have to be examined, like the Renfro case, in individual courtrooms across the country, with the possibility of thousands of judges questioning robo-signers and other loan processing officials.

Renfro's lawyer, Harold Williams, said he will ask to depose GMAC's Stephan, among others. GMAC said in a filing withdrawing the sale of Renfro's four-bedroom home from auction that "verification irregularities may have occurred."

Judge Russo said in an interview that until hearing the evidence, she has no way of telling whether the documents represent an error, negligence, or fraud, and that other judges will have to make the same time-consuming inquiries.

#### '10,000 Hearings'

"If Ohio has 10,000 of these cases, there should be 10,000 hearings," Russo said. "I'm sympathetic to the fact that it's onerous for the lenders, but I still have to do my job."

The judge said she will hear arguments related to the integrity of the documents, how GMAC identified specific cases in which documents may be flawed, and what remediation steps the loan servicer and lender are taking. If she determines the circumstances rise to the level of fraud, GMAC could be found in contempt of court, Russo said.

"You'll probably have different resolutions in different cases from different judges," she said. "This is not going to be solved in a couple of months. The long-term effects are phenomenal."

Russo's court on the 18th floor of Cleveland's sprawling Justice Center has been inundated

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with foreclosures as the city's declining economy was exacerbated by the subprime mortgage crisis. A projected 12,553 foreclosures will be filed in surrounding Cuyahoga County in 2010, the most of any county in Ohio.

#### Renfro's House

One of those cases already filed involved Renfro's house on Klusner Avenue, which he purchased in 2005 for \$114,900. An affidavit in support of a summary judgment motion to authorize foreclosure was done by Stephan, who is identified as a limited signing officer for GMAC Mortgage LLC.

Renfro had fallen five months behind in his payments by the time GMAC, the loan servicer for U.S. Bancorp, moved for foreclosure early this year, he said. An effort to reach a settlement with the lender failed because of Renfro's high credit-card and other debt, and his \$22,000-a-year salary as an auto mechanic, according to Williams, the Renfro lawyer who is with the Legal Aid Society of Cleveland.

"Once you get so far down, it's such a struggle to get back up," said Renfro, 36, who lives in the house with his girlfriend, stepson and 7-year-old daughter, who is deaf.

The nearby school is one of only two in the metro area that can provide Renfro's daughter with a sign-language translator during the school day, he said.

#### Deaf Daughter

"It's quiet," said Renfro, who is following the GMAC- Cordray battle in Russo's court. "If something finally goes my way, it will be such a relief. There's a park at the end of the street. I wanted a safe sidewalk so she could ride her bike. Normal, typical things, I guess. I'm just trying to get back on track."

Judges in Russo's jurisdiction last week drafted new guidelines for dealing with robo-signers, following similar efforts in states such as New York. Under the new rules, attorneys for lenders would have to sign an affidavit swearing that they have communicated with a representative of the party seeking foreclosure and have been informed that an official "has personally reviewed the documents and records relating to this case," according to a draft copy.

The policy will apply to pending cases, and an affidavit will have to be signed before a judgment is entered, said Stephen M. Bucha, the chief magistrate.

"The hope is that will preclude any robo-signing in the future, so that we don't see a repeat of the problem," Bucha said.

#### Future Sales

Bucha and other Cuyahoga County judges said they fear document foreclosure defects may give former homeowners a claim on the title that will affect future sales. That scenario fuels Judge Russo's sense of urgency to sort out problems now, she said.

"If courts around the country do not handle this on an individual case basis and there are later problems with the title, the courts will have participated with the clouding of the title," Russo said. "The potential for harm is so immense at so many levels."

The case is U.S. Bank National Association v. Renfro, 10- 716322, Ohio Court of Common Pleas for Cuyahoga County (Cleveland).

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To contact the editor responsible for this story: David E. Rovella at [drovella@bloomberg.net](mailto:drovella@bloomberg.net).

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